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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/525,361	03/15/2000	David Mack	A-67860-3/RMS/DAV	9370
22930	7590	02/12/2004	EXAMINER	
HOWREY SIMON ARNOLD & WHITE LLP			JOHANNSEN, DIANA B	
BOX 34			ART UNIT	PAPER NUMBER
1299 PENNSYLVANIA AVENUE NW				
WASHINGTON, DC 20004			1634	

DATE MAILED: 02/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/525,361	MACK ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Diana B. Johannsen	1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b])**

- a)  The period for reply expires 5 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Attachment to this Advisory Action.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 48,49,52 and 54-58.

Claim(s) withdrawn from consideration: none.

8.  The drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). 1203 - not considered.

10.  Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: for the reasons of record in view of the non-entry of the After Final Amendment.

**ATTACHMENT TO ADVISORY ACTION**

**New issued raised.**

1. Applicant's proposed amendments raise the following new issues under 35 U.S.C. 112, second paragraph that would require further consideration. Applicant has proposed amending independent claim 48 such that it requires detecting a polynucleotide that "is an mRNA identical to the nucleic acid sequence disclosed in SEQ ID NO: 23." As SEQ ID NO: 23 is not an RNA sequence but a DNA sequence, it is unclear as to how an mRNA molecule could be 100% identical to SEQ ID NO: 23. Accordingly, Applicant's proposed amendment renders the claims vague and confusing.

***Specification***

2. It is noted that the amendment filed October 16, 2001 remains objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. Regarding Applicant's statement in the "Remarks" section of the After Final response that "The sequence listing of SEQ ID Nos. 55, 58, and 62 is deleted," it is noted that no such new Sequence Listing has been received or entered. Further, regarding SEQ ID Nos 54, 56-57 and 59-61, the statement by Applicant's attorney regarding these sequences in the "Remarks" section does not constitute declaratory evidence that the sequences added to the specification constitute the particular sequences that corresponded to the accession numbers in question at the time the invention was made.

***Information Disclosure Statement***

3. The information disclosure statement filed after final rejection on December 13, 2003 fails to comply with 37 CFR 1.97(d) because it lacks a statement as specified in 37

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CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Diana B. Johannsen whose telephone number is 571/272-0744. The examiner can normally be reached on Monday-Friday, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones can be reached at 571/272-0745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Diana B. Johannsen  
Patent Examiner  
February 9, 2004